

**Notice of Allowability**

Application No.

10/799,260

Examiner

Carl H. Layno

Applicant(s)

SOWELAM ET AL.

Art Unit

3766

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Papers filed November 2, 2006.
2. ☒ The allowed claim(s) is/are 2-4,6-15,17-30,32-34 and 36-47.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All   b) ☐ Some\*   c) ☐ None   of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

### **DETAILED ACTION**

1. Acknowledgment is made of applicant's amendment, which was received by the Office on November 2, 2006.

2. Claims 1, 5, 16, 31, and 35 are canceled. Claims 2-4, 6-15, 17-30, 32-34, and 36-47 are active.

#### ***Drawings***

3. The drawings were received on November 2, 2006. These drawings are approved by the Examiner. Consequently, the Examiner is withdrawing the drawing objections which were made in the last Office action.

#### ***Claim Rejections - 35 USC § 112***

4. In view of applicant's modifications to the claims, the Examiner is withdrawing the 35 U.S.C 112 2<sup>nd</sup> paragraph rejections, which were made against claims 2-5, 30, and 32-35 in the last Office action.

#### ***Claim Rejections - 35 USC § 103***

5. Upon further reconsideration of applicant's arguments and amendments to the claims, the Examiner is withdrawing the 35 U.S.C 103(a) rejection of Stadler et al (US 6,795,732) in view of

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McClure et al (US 5,549,652), which was made against claims 1, 5-7, 10-12, 16, 20-22, 25-27, 31, 35-37, and 40-42 in the last Office action.

***Allowable Subject Matter***

6. Claims 2-4, 6-15, 17-30, 32-34, and 36-47 are allowed.

***Reasons for Allowance***

7. The following is an examiner's statement of reasons for allowance:

Although the prior art references of Nehls et al (US 7,092,759) and Hine et al (US 7,142,919), cited herein, both describe the use of right and left ventricular accelerometers for detecting cardiac wall motion, these references could not be combined with the Stadler et al (US 6,795,732) patent, cited previously, since the Stadler et al patent was based around the concept of using sonomicrometers and ultrasonic signals for detecting heart wall motion. This potential combination would fundamentally alter the structure and intent of the original Stadler et al device. The Nehls et al (US 7,092,759) and Hine et al (US 7,142,919) patents cannot be used on their own since they lack the applicant's claimed step, and associated means, for locating fiducial points, comparing the temporal locations of the fiducial points, and generating a metric indicative of ventricular synchrony based upon the time difference between the temporal locations of the fiducial points. In view of these shortcomings and those of the other prior art references, the Examiner deems all remaining claims to be allowable over the prior art of record.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue

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fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### *Conclusion*

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

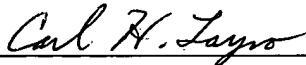
The Nehls et al (US 7,092,759) and Hine et al (US 7,142, 919) are cited for their pertinent use of a plurality of heart wall motion sensors and cardiac pacing/resynchronization therapy. As stated supra, these references differ from applicant's claimed device in that they do not identify fiducial points, compare the fiducial points in time, nor generate a metric indicative of ventricular synchrony based upon this time difference.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl H. Layno whose telephone number is (571) 272-4949. The examiner can normally be reached on 9/4/5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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CARL LAYNO  
PRIMARY EXAMINER

CHL  
12/15/2006